In Chancery.

Between JOHN McMILLAN,

Plaintiff.

AND

Charles S. Gross, Charles L. Hoyt, John Tear, George Thester, John Fish, James McConnell, Thomas Vedder, Orsmel H. Watson, Robert McKay, James Glen, Andrew J. Moore, and the Pepper Well Petroleum Company,

Defendants.

City of London. } *To the Honorable the Judges of the Court of Chancery:*

The Bill of Complaint of John McMillan, of the Village of Bothwell, in the Township of Zone, in the County of Kent, and Province of Canada, Esquire, the above named plaintiff, humbly complaining, sheweth:

1. On the Eighth day of December, in the year of our Lord one thousand eight hundred and sixty-four, one Edward Pepper being seized in fee of, or otherwise well entitled to the lands and hereditaments in the indenture hereinafter set forth, mentioned and described, for the consideration therein expressed, executed an indenture in the words and figures following, that is to say: "This Indenture, made this Eighth day of December, in the year of our Lord one thousand eight hundred and sixty-four, between Edward Pepper, of the Township of Zone, in the County of Kent, in the Province of Canada, yeoman, of the first part, and John McMillan, of the City of Glasgow, in the County of Lanark, Scotland, Esquire, of the second part, witnesseth, that the said party of the first part doth demise and lease unto the said party of the second part, his executors, administrators and assigns, all that certain piece or tract of land being composed of thirty acres of the east portion of the east half of Lot Number Nineteen River Range, in the aforesaid Township of Zone and County of Kent, bounded as follows: On the south by the River Thames, on the east by the dividing line running between Lots Number Nineteen and Twenty, on the north by the Longwood Road, and on the west by a line running equidistant from the boundary line between Lots Number Nineteen and Twenty, beginning at a point to the south on the River Thames, and continuing to Longwood Road, the said boundary now described and leased to contain thirty acres, with a full privilege of ingress and egress by a road running through the centre of said lot to and from said premises, for a term of twenty years from the date of this lease, for the purpose of digging, boring for and procuring all the oil, or salt, or other mineral contained within or under said demised and leased premises, and also for the purpose of erecting all necessary buildings that may be required for the purpose of obtaining, storing or shipping care of said oil, or salt, or other mineral. The said party of the second part agrees to pay to the said party of the first part, his executors, administrators and assigns, the sum of one dollar, the receipt whereof is hereby confessed and acknowledged, and also the one-fifth share of all the oil, salt, or other mineral to be got within or under said demised and leased premises, or its equivalent in money at the current market price, at the wells, every two months. The aforesaid first party shall at all times have access to the books of the aforesaid second party for the purpose of ascertaining the products of the oil wells on this lease, and also to ascertain the price at which the crude oil is sold at. The said party of the second part binds himself, his executors, administrators and assigns to begin and continue with all due diligence one oil well one year after the date of this lease, and to begin a second oil well within eight months from the date of this lease, and to be allowed two years to test whether or not oil can be got in paying quantities. Failing oil not being got in paying quantities, then this lease shall become null and void; but if oil is got in paying quantities, then this lease shall continue in force for the full period thereof,

viz., twenty years from this date. The aforesaid first party shall be allowed the full right and privilege of the present leased and demised premises for agricultural purposes, as also all the timber; and should the aforesaid second party injure the crops of aforesaid first party damages to be awarded according as arbitrars shall decide. Further, the aforesaid second party shall be bound to fill up all abandoned oil wells, and shall pay all taxes on this lease. It is further provided that the aforesaid first party shall have four acres reserved out of the present leased premises for the purpose of building house and barn, and on which the aforesaid second party shall have no right to put down or operate for oil or salt, or other mineral. In witness whereof the aforesaid parties have hereunto set their hands and seals the day and year first above written.

Signed and Sealed in presence of } (Signed) EDWARD PEPPER. [L.S.]
(Signed) GEO. G. WARD. } (Signed) JOHN MCMILLAN. [L.S.]
P. P. WILLIAM MCMILLAN.

2. Immediately after the execution of the said indenture your complainant John McMillan was let into possession, occupation and enjoyment for the purposes in the said indenture mentioned of all the said demised premises, save and except four acres thereof, which under and in pursuance of the right to do so reserved in and by the said indenture, the lessor, the said Edward Pepper, selected for the purposes in the said indenture mentioned.

3. Your complainant John McMillan on the 9th January, A.D. 1865, was a trader residing and carrying on business at the City of Glasgow, in that part of the Kingdom of Great Britain and Ireland called Scotland, and then and there became and was adjudged a bankrupt, and thereupon one Andrew MacEwan was appointed assignee and trustee of your complainant's estate and effects, and afterwards the said appointment was duly confirmed according to law, and the said Andrew MacEwan thereupon, as such assignee and trustee, entered into possession of the said lands, except the said four acres, and the same except as aforesaid became vested in the said Andrew MacEwan as such assignee and trustee.

4. The said Andrew MacEwan, as such assignee and trustee of your complainant John McMillan, by indenture bearing date on the 17th March, A.D. 1865, and made between the said Andrew MacEwan as such assignee and trustee as aforesaid of the first part, and one Richard H. Pease of the second part, for the valuable consideration therein expressed, conveyed, transferred and assigned to the said Richard H. Pease all the unexpired term created by the said indenture of the 8th December, A.D. 1864, and all other interests in or to the premises acquired by your complainant under the said last mentioned indenture, reserving, however, to him, the said Andrew MacEwan, as such assignee and trustee of your complainant John McMillan, one-twenty-fifth of all the oil which the said Richard H. Pease or his assigns might or should obtain from or upon the said demised premises; and upon the said seventeenth day of March the said Richard H. Pease did by an indenture by way of rent charge secure to the said Andrew MacEwan as such assignee and trustee as aforesaid the said one-twenty-fifth share of all such oil as aforesaid.

5. Afterwards, and while the said reservation and right to the one-twenty-fifth share of such oil as aforesaid and the said rent charge were still vested in the said Andrew MacEwan as such assignee and trustee as aforesaid, and your complainant's debts and liabilities having been fully paid and discharged, your complainant John McMillan was by the proper court and authority in that behalf in Scotland aforesaid declared discharged from his said bankruptcy, and the said rent charge and reservation of and right to the one-twenty-fifth share of all the oil aforesaid, and all the property, estate and effects held by the said Andrew MacEwan as such assignee and trustee of your complainant John McMillan became and the same were by the act and warrant of such proper court and authority, and according to law, duly vested in your complainant.

6. The said Richard H. Pease conveyed and assigned all his interest in the unexpired term created by the said indenture of the 8th December, A.D. 1864, and all other interests acquired by him under the said last mentioned indenture, subject to your complainant's said reservation of one-twenty fifth part or share of such oil as aforesaid to one John P. Jones, one John Albert Mendum, one Charles N. Newell, and one Andrew O. Butler, who subsequently conveyed and assigned the same, subject, as aforesaid, to the defendants the Pepper Well Petroleum Company.

7. The said Edward Pepper since the execution of the said indenture of the 8th December, A. D. 1864, for certain valuable considerations conveyed to the defendant Oramel H. Watson and the said Andrew O. Butler, all his right, title and estate in and to the said thirty acres of land mentioned and described in the said indenture of the 8th December, 1864, subject to the rights of your complainant and others claiming under the said last mentioned indenture.

7a. Subsequently the said Oramel H. Watson and Andrew O. Butler sold and for valuable consideration conveyed one undivided fifth of their estate and interest in the said thirty acres of land, subject as aforesaid, to one Abel Pond, a like portion to one Francis H. Griggs, and a like portion to one Ira M. Gifford.

8. Subsequently the said defendant Oramel H. Watson and the said Andrew O. Butler, Abel Pond, Francis H. Griggs and Ira M. Gifford sold and conveyed to the said John P. Jones, John Albert Mendum, Charles N. Newell, and Andrew O. Butler, all their and each of their right, title and interest in and to the said thirty acres of land.

8a. Subsequently the said John P. Jones, John Albert Mendum, Charles N. Newell and Andrew O. Butler conveyed and assigned all such last mentioned right, title and interest to the defendants the Pepper Well Petroleum Company, subject as aforesaid.

9. The defendants the Pepper Well Petroleum Company have demised and leased for the purpose of digging, boring for and procuring oil therein and therefrom one acre of the said four acres of the said lands and premises so selected and reserved by the said Edward Pepper as aforesaid to the defendant Oramel H. Watson, reserving to themselves one-fourth of all the oil which the said Oramel H. Watson or his assigns might or should obtain therefrom.

9a. The said the Pepper Well Petroleum Company have also demised for the like purposes one other acre of the said four acres to the defendants John Fisk and James McConnell, reserving to themselves one-third of all the oil to be obtained therefrom.

10. The defendants the Pepper Well Petroleum Company have also demised for the purposes in the ninth paragraph hereinbefore mentioned one other acre of the said four acres to the defendant Thomas Vedder, reserving to themselves one-third of all the oil which the said Thomas Vedder or his assigns might or should obtain from or upon said one acre of land.

11. The said the Pepper Well Petroleum Company have also demised for the purposes in the ninth paragraph hereinbefore mentioned one other acre of the said four acres to the defendant Charles S. Gross, reserving to themselves one-fourth of all the oil which the said Charles S. Gross or his assigns might or should obtain from or upon said one acre of land.

12. Your complainant John McMillan had before he so became bankrupt as aforesaid and the assignees of the said indenture of lease since the assignment thereof by the said Andrew MacEwan have at great expense caused wells to be sunk upon the said demised premises (other than the said four acres), and have by means of the said wells obtained considerable quantities of oil.

13. The defendant Charles S[illegible] since the said demise and lease to him of the said one acre (parcel of the said four [illegible]) has sunk two wells for oil upon the said one acre, and has obtained and is now obtaining large quantities of oil therefrom.

14. Each of the defendants Oramel H. Watson, James McConnell and Thomas Vedder since the said conveyance to the said Oramel H. Watson by the said Edward Pepper has begun to sink and is now sinking a well for oil upon the portions respectively of the said four acres so conveyed or demised to him as aforesaid, and is endeavoring to procure oil therefrom.

15. The said wells of the defendants are very injurious to the wells sunk upon the other portion of the said thirty acres, and from which your complainant is entitled to have and receive one twenty-fifth of the oil produced, and are besides likely to injure your complainant in respect of other wells proposed to be sunk upon other portions of the said thirty acres, inasmuch as they now drain and will drain away oil from the said existing and proposed wells on the said portions of the said thirty acres other than the said four acres, of which otherwise your complainant would obtain the one twenty-fifth share by means of the said wells, and your complainant is likely to sustain still greater injury if the said defendants who have not already obtained oil from their said wells are allowed to proceed with the sinking of such wells till oil is obtained.

16. The defendants threaten and intend to sink other wells for oil upon the said four acres.

17. Your complainant submits that by the true construction of the said indenture of the 8th December, 1864, the defendants are not entitled to sink oil wells on the said four acres, and further, that your complainant is entitled to one twenty-fifth of all the oil lying under the said four acres, which the lessees of the remainder of the said thirty acres can obtain without sinking wells on the said four acres.

18. Your complainant and the said Andrew MacEwan at the time the said wells were so sunk on the said four acres resided in Scotland aforesaid, and not in Canada, and your complainant had no control over the said demised thirty acres during all the time the said Andrew MacEwan was such assignee and trustee as aforesaid, and when the said defendants commenced sinking said wells for oil on the said four acres, but immediately after your complainant's property was revested in him, as in the fifth paragraph hereinbefore mentioned, he came to Canada and forbade the said defendants sinking wells for oil upon or obtaining or taking oil from the said four acres, but they persisted in so doing, and still continues so to do.

19. The defendant, Oramel H. Watson has sold and assigned to each of the defendants Andrew J. Moore, Robert McKay, James Glen, John Tear and George Thesteper, undivided shares and interests in the said lease of the said one acre of land in the ninth paragraph hereinbefore mentioned, and he has also sold and assigned to many other persons small, undivided shares therein, but the said defendants own the greater portion of the shares of and in said lease.

20. The defendants John Pew, James McConnell and Thomas Vedder have sold and assigned undivided shares and interests of and in the leases in the ninth and tenth paragraphs respectively mentioned to many persons, but the said defendants own the greater portion of the shares in the said leases.

21. The defendant Charles S. Gross has sold and assigned to each of the defendants Charles L. Hoyt, John Tear, George Thester and the Pepper Well Petroleum Company undivided shares and interests in the said lease of the said one acre of land in the eleventh paragraph hereinbefore mentioned, and he has also sold and assigned to many other persons small undivided shares therein, but the said defendants own the greater portion of the shares of and in said lease.

22. A very great number of persons are interested in the said leases from the said the Pepper Well Petroleum Company of the said four acres, and their shares are being continually sold and transferred from one person to another, by reason whereof the making of the several owners thereof parties to this suit would entail great delay and expense.

28. Your complainant submits that the several defendants to this suit sufficiently represent the interests of all parties interested in the property and matters in question therein.

Your complainant therefore prays as follows:

1. That it may be declared that the defendants and all persons interested in or claiming any interest in the matters and property in question in this suit under them or any of them have no right under the said indenture of the 8th December, 1864, to sink any wells for oil on the said four acres.

2. That the defendants and the said other persons may be restrained by the order and injunction of this honorable Court, for which writ your complainant specially prays, from continuing to obtain oil from the said wells already sunk upon the said four acres, and also from continuing to sink for oil the said wells already commenced thereon, and also from sinking any other wells for oil thereon.

3. That an account may be taken of the damages caused to your complainant by the said oil wells on the said four acres, and that your complainant may be paid what shall be found due in respect thereof.

4. That for the purposes aforesaid all proper directions may be given and accounts taken.

5. That the defendants may be ordered to pay the costs of this Court.

6. That your complainant may have such further and other relief as may seem meet.

And your complainant will ever pray.